IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(Special Original Jurisdiction)

Thursday, the Twenty Ninth Day of July, Two Thousand and Four

Present :

The Hon'ble Mr.Justice J.CHELAMESWAR

W.P.No.16502 of 1994

Between :

D.Vasantha Rao,

S/o Venkata Subba Rao, Aged : 42 years,

Guntur .. Petitioner

And

1. The Asst. Director of Handlooms

and Textiles, Guntur

2. The Guntur Weavers Cooperative

Production and Sales Society Limited,

No.672, Guntur, rep. by its

Special Officer .. Respondents

Petition under Article 226 of the Constitution of India to issue an appropriate Writ, order or direction more in nature of WRIT OF CERTIORARI, calling for the

records relating to and connected with the proceedings of 2nd respondent dt.19.8.1994 in Rc.No.1/GNT/WCS/94 and to quash or set aside the same as illegal, arbitrary, unconstitutional and void and to declare the proceedings of the 1st respondent dated 17.8.1994 in Rc.No.1450/94-C as illegal, arbitrary, void and unconstitutional and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the petitioner : Mr.T.Rajendra Prasad

Counsel for the respondents : Govt. Pleader for Cooperatives

Govt. Pleader for Industries &

Commerce

The Court made the following **ORDER :**

Writ Petition is filed with the prayer as follows :

> "to issue an appropriate Writ, order or direction more in nature of WRIT OF CERTIORARI, calling for the records relating to and connected with the proceedings of 2nd respondent dt.19.8.1994 in Rc.No.1/GNT/WCS/94 and to quash or set aside the same as illegal, arbitrary, unconstitutional and void and to declare the proceedings of the 1st respondent dated 17.8.1994 in Rc.No.1450/94-C as illegal, arbitrary, void and unconstitutional and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The petitioner was working as Manager of the 2nd respondent society i.e., the Guntur Weavers Cooperative Production & Sales Society Limited, it appears for a period of 20 years by the date of filing of the present writ

petition. It is pertinent here to mention that this is a writ petition of the year 1994. The 1st respondent in his proceedings dated 17.8.1994 directed the 2nd respondent to keep the petitioner under suspension. Such an order was passed in exercise of the powers conferred on the 1st respondent under Section 59 of the A.P.Cooperative Societies Act. Consequent upon the said communication of the 1st respondent, the 2nd respondent by his proceedings dated 19.8.1994 sought to keep the petitioner under suspension until further orders. Challenging both the above mentioned proceedings, the present writ petition is filed. By an interim order dated 19.9.1994 in WPMP No.20440 of 1994, a learned single Judge of this Court granted interim suspension of the proceedings of the 2nd respondent dated 19.8.1994 referred to earlier. The 1st respondent filed the counter. From the counter, it appears that there are serious allegations of financial irregularities against the petitioner herein while dealing with the funds of the 2nd respondent society. It appears from the counter affidavit that on an earlier occasion, a House Committee appointed by the Andhra Pradesh Legislative Assembly investigating into the various allegations against the writ petitioner in the year 1988 suggested to the Commissioner of Handlooms, Andhra Pradesh, to take necessary action against the petitioner pursuant to which the Commissioner, Handlooms by his proceedings dated 12.7.1988 had earlier directed the 1st respondent herein to keep the petitioner under suspension. The said direction was purported to have been exercised under section 59 of the A.P.Cooperative Societies Act which direction came to be challenged by the writ petitioner herein in an earlier writ petition. This Court while disposing of the writ petition, it appears, observed “that the appropriate authorities shall be at liberty to exercise power under Section 59 of the Act, if the situation so warrants, subject to the fulfillment of the conditions enumerated in the said section.”

It is stated in the counter at para (5) that thereafter an enquiry under Section 51 of the A.P.Cooperative Sociteis Act has been ordered on 20.5.1994. The Enquiry Officer sent an interim report dated 2.8.1994 to the 1st respondent herein wherein it was informed to the 1st respondent that its desirable to keep the petitioner herein under suspension during the pendency

of the enquiry in order to ensure that the records of the society are not tampered with. On the receipt of the said communication from the Enquiry Officer, the 1st respondent passed the 1st of the impugned orders herein i.e., the order dated 17.8.1994 directing the 2nd respondent herein to keep the petitioner under suspension.

The learned counsel for the petitioner submitted that he had no notice of the impending enquiry under Section 51 of the Act. He also contended that the power under Section 59 of the Cooperative Societies Act did not take within its feet the power to suspend an employee of the cooperative society such as the petitioner on an interim report sent by the Enquiry Officer. Thirdly, that the fact such an interim report and a suggestion that the petitioner be kept under suspension was made by the Enquiry Officer is not referred to in either of the impugned orders in the present writ petition and therefore the impugned orders are illegal.

Section 59 of the A.P.Cooperative Societies Act reads as follows :

> **59. Suspension of officer or servant of society**: - (1) Where in the course of an audit under Section 50 or an inquiry under Section 51 or an inspection under section 52 or Section 53, it is brought to the notice of the Registrar that a paid officer or servant of a society has committed or has been otherwise responsible for misappropriation, breach of trust or other offence, in relation to the society, the Registrar may, if in his opinion there is *prima facie* evidence against such paid officer or servant and the suspension of such paid officer or servant is necessary in the interests of the society, direct the committee pending the investigation and disposal of the matter, to place or cause to be placed such paid officer or servant under suspension from such date and for such period as may be specified by him, but not retrospectively.
>
> (2) On receipt of such direction, the committee shall, notwithstanding any provision to

> the contrary in the bye-laws, place or cause to be placed the paid officer or servant under suspension forthwith.
>
> (3) The Registrar may direct the committee to extend, from time to time, the period of suspension and the paid officer or servant suspended shall not be reinstated except with the previous sanction of the Registrar.

The language of Section 59 clearly indicates that it is during the course of the pendency of the enquiry under Section 51, action for suspension of any employee can be taken. The indicators of language of section are thus :

The opening clause which reads “where in the course of an audit”, “the Registrar may, if in his opinion there is *prima facie* evidence against such paid officer or servant is necessary in the interests of the society, direct the Committee pending the investigation and disposal of the matter,…”. In my view, the language leaves no doubt or scope for any interpretation other than the interpretation that the suspension contemplated under Section 59 is a suspension pending an enquiry under Section 51 or audit under Section 50, inspection under Section 52 or 53. The suspension is a suspension to enable a free and fair inspection or audit and to eliminate the possibility of tampering with the records. It is not a suspension as a measure of punishment consequent upon any adverse finding recorded by an audit party, the Enquiry Officer etc.

If that be the case, the submission that the petitioner was not put on notice of an impending enquiry is irrelevant and without any basis in law. Though a submission was made at the Bar that till date no notice of the pending enquiry under Section 51 is given to the petitioner, I am not going into that aspect as it’s a question of fact, which is required to be examined in an appropriate proceeding and the consequences of non service of notice as alleged on the final outcome of the enquiry under Section 51 are different questions which are not required to be considered in the present writ petition.

The other submission made by the learned counsel for the petitioner is that the interim report of the Enquiry officer is not referred to either in the proceedings of the 1st respondent or the 2nd respondent also requires, in my view, to be rejected for the reason, that, in a matter of suspension pending an enquiry, more particularly, in the present case which happens to be a statutory enquiry under section 51, the material on the basis of which a decision was taken to keep the petitioner under suspension during the pendency of the enquiry is not required to be communicated to the petitioner. At any rate, nothing in law is brought to my notice to establish that the petitioner is entitled to know the material on the basis of which a decision was taken to keep the petitioner under suspension except a very emphatic assertion at the Bar that the petitioner is entitled.

For the above mentioned reasons, I do not see any merits in the writ petition and the same is dismissed with costs.

It is unfortunate that on the face of serious allegations of financial irregularities in the 2nd respondent society and also an allegation that the petitioner herein is responsible for such irregularities, the matter which went upto the notice of the Legislative Assembly, the matter is stalled for almost sixteen years. The respondents are directed to take appropriate action in accordance with law against the petitioner, if there is sufficient material expeditiously and in accordance with law.

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knk 29.07.2004

MEMORANDUM OF COSTS

Respondents ( ) Costs Rs. Ps.

Stamp for Vakalatnama)

)

Advocate's Fee) Not 0 - 00

) certified

Translation and Printing Charges)

To be paid by the petitioner to the respondent 0 - 00

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sd/-

Assistant Registrar.

To

1. The Assistant Director of Handlooms and Textiles, Guntur.
2. The Special Officer, Guntur Weavers Cooperative Production and Sales Society Limited, No.672, Guntur.
3. two CD copies.
4. Two CCs to Government Pleader for Cooperation, High Court of A.P.(OUT)
5. Two CCs to the Government Pleader for Industries and Commerce, High Court of A.P.(OUT).